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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/901,155

07/10/2001

John E. Schommer

7088

24955

7590

03/15/2005

ROGITZ & ASSOCIATES  
750 B STREET  
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SAN DIEGO, CA 92101

EXAMINER

KIM, CHRISTOPHER S

ART UNIT

PAPER NUMBER

3752

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/901,155

Applicant(s)

SCHOMMER, JOHN E.

Examiner

Christopher S. Kim

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 25-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 16, 2004 has been entered.

### ***Response to Amendment***

1. The response filed February 22, 2005 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

3. Claims 25-38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 25 recites "...without intervening structure between the manifold and handle..." The disclosure, as originally filed, fails to specify this exclusionary recitation. Applicant is attempting to claim what his device is not rather than what it is. Applicant can accomplish similar ends in a positive manner, such as, the handle is directly attached to the manifold. Claim 32 similarly recites "without further structure rearwardly of the rear transverse edge..."

***Claim Rejections - 35 USC § 102***

4. Claims 25-29, 32-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Reed et al. (5,548,866).

Reed discloses a cleaning device comprising: an elongated handle 30 having a water connector 320 and valve 340; an elongated hollow jet manifold 656; plural nozzles 658; a forward wing 646; a rear wing 644, 616; at least one wheel 608.

Regarding claim 25, the claim recites the open ended transitional phrase "comprising" and fails to further structurally define the "elongate hollow jet manifold." Therefore, the elongate hollow jet manifold 656 of Reed is considered to include all elements up to the handle, i.e. the lower end of the handle engages the manifold without intervening structure between the manifold and handle.

Similarly for claim 32, all structure rearwardly of rear wing 644, 616 is considered part of the rear wing.

5. Claims 32-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Briar (4,200,236).

Briar discloses a cleaning device comprising: an elongated handle 4 having a water connector 43 and valve 45; an elongated hollow jet manifold 20-22; plural nozzles 6; a forward wing 2,12, 24 (forward portion of ; a rear wing 24, 11; at least one wheel 28.

Claim 32 recites the open ended transitional phrase "comprising" and fails to structurally define the "rear wing." All elements rearward including elements 8 and 9 are considered part of the rear wing.

### ***Claim Rejections - 35 USC § 103***

6. Claims 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briar (4,200,236).

Briar discloses a cleaning device comprising: an elongated handle 4 having a water connector 43 and valve 45; an elongated hollow jet manifold 20-22; plural nozzles 6; a forward wing 2,12, 24 (forward portion of ; a rear wing 24, 11; at least one wheel 28.

Briar discloses the claimed invention except for "without further structure rearwardly of the rear transverse edge that is closer to the ground during operation than the rear wing." It would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have removed the bush 8 and bristle 9 of Briar, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184.

7. Claims 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briar (4,200,236) in view of Nelson (4,730,786).

Briar discloses the limitations of the claimed invention with the exception of the filter. Nelson discloses a frusto-conical filter 66. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the filter of Nelson to the device of Briar to filter the water.

8. Claims 30, 31 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al. (5,548,866) in view of Nelson (4,730,786).

Reed discloses the limitations of the claimed invention with the exception of the filter. Nelson discloses a frusto-conical filter 66. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the filter of Nelson to the device of Reed to filter the water.

### ***Response to Arguments***

9. Applicant's arguments filed November 16, 2004 have been fully considered but they are not persuasive.

Applicant argues that the prior art does not disclose the negative recitation "without..." in claims 25 and 32. See explanation above.

10. Applicant's arguments filed February 22, 2005 have been fully considered but they are not persuasive.

Applicant argues that the lack of an explicit negative recitation may not be sufficient to establish a prima facie case of lack of support for a newly added negative

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recitation in the claims. While there may be case where lack of an explicit negative recitation in the original disclosure may support a newly added negative recitation in the claims, the current application is not one of those cases. Applicant provides no explicit negative recitation in the originally filed disclosure. Additionally, the substitute specification, filed on September 10, 2001, on page 23 recites,

Consequently, while the foregoing description has described the principle and operation of the present invention in accordance with the provisions of the patent statutes, **it should be understood that the invention may be practiced otherwise as illustrated and described above and that various changes in the size, shape, and materials, as well as on the details of the illustrated construction may be made, within the scope of the appended claims without departing from the spirit and scope of the invention.** (Bold added)

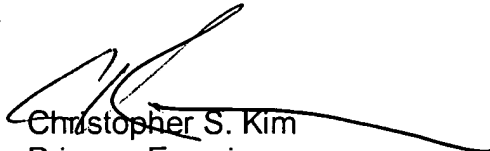
In fact, applicant himself teaches away from the newly added exclusionary recitation.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher S. Kim  
Primary Examiner  
Art Unit 3752

CK